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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of)
the Telecommunications Act of 1996)

CC Docket No. 96-128

COMMENTS OF CITIZENS UNITED FOR REHABILITATION OF ERRANTS

The Citizens United for Rehabilitation of Errants (“CURE”) submits these comments in response to the *Notice of Proposed Rulemaking* (“NPRM”)^{1/} released by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned docket. The Commission seeks comment on issues related to the provision of inmate telephone service.^{2/} Specifically, the Commission has initiated this rulemaking proceeding to explore whether the current regulatory regime applicable to the provision of inmate calling services is responsive to the needs of correctional facilities, inmate calling service providers and inmates, and, if not, whether and how the FCC might address those unmet needs.^{3/}

^{1/} Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *Order on Remand & Notice of Proposed Rulemaking*, FCC 02-39 (rel. Feb. 21, 2002) (“*Order on Remand*” or “NPRM”).

^{2/} *Id.* ¶¶ 70-79.

^{3/} *Id.* ¶ 72.

CURE is dedicated to promoting the rehabilitation of prison inmates, and strongly believes that maintaining ties to family members and communities is crucial to the rehabilitative process. Unfortunately, consumers who need to communicate with family and friends in correctional facilities are generally denied access to competitive telecommunications services and are, therefore, forced to pay some of the highest telephone rates in the nation.

In the *Order on Remand*, the Commission properly rejected the attempt by the inmate calling service providers to impose a tax or surcharge on the families of inmates, refused to preempt state measures that protect consumers of inmate calling services, and declined to deregulate a market controlled by monopolist providers.^{4/} CURE supports the Commission's objective in this proceeding – to ensure that the regulatory regime for inmate calling services continues serving the public interest.^{5/}

CURE addresses herein five general areas on which the Commission seeks comment: rates, provider costs, state rate caps, alternatives to the current system, and potential cost-reduction measures. CURE strongly urges the Commission to continue acting in the public interest and to reject the self-interested arguments of the providers of prison payphone services. There is no telecommunications competition in prison payphone services. Instead, providers compete against each other to offer prisons the highest sales commission. To support these high sales commissions, the providers must then charge users of prison payphone services outrageous fees and rates. Until there is competition in the actual provision of inmate telecommunications

^{4/} *Order on Remand* ¶¶ 9-44.

^{5/} *Id.* ¶ 72.

services, the Commission must ensure that users of those services are protected from unjust and unreasonable telecommunications charges.

I. THE HIGH RATES CHARGED BY INMATE CALLING SERVICE PROVIDERS ARE ATTRIBUTABLE TO A LACK OF COMPETITION

The Commission seeks comment on the costs and rates associated with the provision of inmate calling services. As the Commission correctly notes, the record demonstrates that rates for inmate calling services have increased over the last decade.^{6/} These rate hikes stand in stark contrast to the overall trend in telecommunications towards lower rates and improved services. These unreasonable increases can be attributed to two factors – the lack of market forces and the high commission payments demanded by correctional institutions for the grant of exclusive contracts.

A. The Lack of Market Forces Creates a Double Monopoly

As the Commission notes, the high rates charged by inmate calling service providers are, at the very least, “partially attributable to a lack of market forces.”^{7/} This absence of market pressure creates a situation that is uniquely detrimental for consumers of inmate calling services. In the correctional institutions context, the consumer is not the “buyer” in terms of being the entity that controls choice over the service or the price. Instead, the correctional institution makes the choices and has location monopoly power. Compounding this problem is the fact that the correctional institution vests the service provider submitting the winning bid with monopoly

^{6/} *NPRM* ¶ 73.

^{7/} *Id.*

power by granting an exclusive contract to that facility's inmates.^{8/} This is essentially a double monopoly.

This double monopoly results in what the Commission has termed "an upward spiral of increasing rents and increasing inmate calling rates."^{9/} There is no market discipline to control the rates charged by the provider monopolist, and there are market pressures on the provider to increase rates to cover the commissions demanded by the location monopolist. These reactions to a lack of market discipline explain the current unjust and unreasonable rates.^{10/} Because it is "the friends and families of inmates that ultimately bear the costs of the calls," CURE urges the Commission to design a regulatory regime that addresses commission payments and encourages states to impose rate caps.^{11/}

B. Commission Payments Artificially Inflate Rates

The Commission is correct that commissions demanded by correctional institutions are a major contributing factor to the excessive rates. Some commissions account for well over 50 percent of the rate charged to inmates.^{12/} These commissions are artificial costs that have no relationship to the service rendered. To the extent that a commission payment leads to an unjust or unreasonable charge upon either the ultimate consumer or the inmate calling service provider,

^{8/} Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, *Second Report and Order and Order on Reconsideration*, FCC 98-9, ¶ 48 (rel. Jan. 29, 1998) ("*Billed Party Preference Order*").

^{9/} NPRM ¶ 73.

^{10/} *Billed Party Preference Order* ¶ 48.

^{11/} NPRM ¶ 73.

^{12/} OFFICE OF PERFORMANCE EVALUATION, IDAHO STATE LEGISLATURE, REPORT 01-01, INMATE COLLECT CALL RATES AND TELEPHONE ACCESS: OPPORTUNITIES TO ADDRESS HIGH PHONE RATES 6 (Jan. 2001).

Section 201(b) of the Act provides the Commission authority to declare such a commission unlawful.^{13/}

The *Order on Remand* and *NPRM* correctly encourage correctional institutions to examine their commissions to see whether they are having negative effects on providers and consumers. Some states are already taking notice. Indiana reduced its commissions by fifty percent and mandated that the reductions be passed through to consumers. Similar commission reductions have been announced in California and Pennsylvania, and Nebraska accepts no commission for inmate calling contracts. CURE requests that the Commission take action to decrease commissions, coupled with a mandatory pass-through of any reduction to consumers to make such a reduction more than a mere shifting of monopoly profits.^{14/}

II. RATE CAPS LIMIT UNJUST AND UNREASONABLE RATES

Because state-mandated rate caps are often the only check on the excessive rates charged to the families of inmates, the Commission properly rejected the Inmate Calling Service Providers Coalition's ("ICSPC's") request to preempt such caps.^{15/} In addition, the Commission rejected ICSPC's attempt to impose large per-call surcharges on end users. Such surcharges would have circumvented state efforts to ensure just and reasonable rates. CURE agrees with the Commission's conclusion that data provided by ICSPC is unconvincing.^{16/}

^{13/} 47 U.S.C. § 201(b); *Billed Party Preference Order* ¶ 48.

^{14/} Commissions must not be treated as a cost, but rather as a profit charged by a monopolist. Such a monopoly-based profit should not be imposed on consumers. In the *Order on Remand*, the Commission correctly characterized commissions as profit, not cost. *Order on Remand* ¶ 13.

^{15/} *Order on Remand* ¶¶ 9-26.

^{16/} *Id.* ¶¶ 24, 36-38; *NPRM* ¶ 74.

There is no merit to the ICSPC's claims that rate caps limit providers from recovering their costs of service. Moreover, the ICSPC's contentions are undercut by the fact that when a contract with rate caps is put out for bid in the federal system or by state and local correctional institutions, ICSPC's members continue to submit proposals.

State rate caps were not adopted without cause. Some states have adopted caps after finding that the rates being charged could not be justified by any factor other than the consumer's lack of choice. Other states have imposed caps based on evidence that providers were charging rates higher than their filed rates. Rate caps have worked in checking the ability of providers to increase rates. The rates charged in the federal system are much lower than in state systems,^{17/} and the rates charged in states with rate caps are generally lower than in the states without them.^{18/} Rather than preempting states that are acting in the public interest, the Commission should encourage the remaining states to enact rate caps to protect inmates and their families from exorbitant rate increases.^{19/}

III. ALTERNATIVE MEASURES CAN CONTROL RATES

The Commission asks for comment on alternatives to collect calling, especially debit calling. There are several promising alternatives to the dominant collect calling regime that

^{17/} *NPRM* ¶ 77 & n.176. The Commission notes that one explanation is the use of debit calling by the federal prisons. Debit calling is discussed in Section III, *supra*.

^{18/} See Letter from Robert F. Aldrich, ICSPC, to Glenn Reynolds, Common Carrier Bureau, CC Docket No. 96-128, Attachment – *Rates Charged for a 12 Minute Inmate Local Collect Call and State-Imposed Rate Ceilings* (June 29, 2001).

^{19/} In 1998, the Commission declined to establish price benchmarks or caps because setting them would give providers “little incentive to contract to offer services at a lower rate.” *Billed Party Preference Order* ¶ 48. Unfortunately, this policy has not decreased rates.

should be explored and used to give inmates a choice of multiple methods to reach their families by phone.

A. Debit Calling

Debit calling is being used successfully by the federal system and states such as Tennessee, Colorado, Minnesota, and Indiana.^{20/} Mandating that providers offer this option would give inmates the ability to choose between debit calling and collect calling depending on their needs and preferences.^{21/} The federal system uses no tax dollars and is self-sufficient,^{22/} and a number of security, monitoring, regulating and reporting functions are available.^{23/} Moreover, debit calling meets the needs of the inmate calling service providers because it substantially reduces provider costs by eliminating operator services, billing and collection, and bad debt.^{24/}

CURE urges the Commission to facilitate the adoption by correctional facilities of debit calling to give inmates some level of consumer choice, and alleviate some of the pressures and incentives that have produced increased rates. Because debit calling lowers provider costs, it is only just and reasonable that the Commission, states, and correctional institutions ensure that debit calling is coupled with rate reductions.

^{20/} *NPRM* ¶ 77.

^{21/} The federal system uses debit calling and also allows inmates to choose collect calling if there is not enough money in their commissary accounts or other reasons as well. VIRGINIA STATE CORPORATION COMMISSION, REPORT ON RATES CHARGED TO RECIPIENTS OF INMATE CALLS 14 (2000).

^{22/} *Id.*

^{23/} *Id.* at 15.

^{24/} *NPRM* ¶ 76. According to the ICSPC, these categories account for as much as 27 percent of provider costs. See Letter from Jacob S. Farber, ICSPC, to Magalie Roman Salas, FCC Secretary, CC Docket No. 96-128, Attachment – *12 Minute Local Call, Cost Analysis* (April 6,

B. Other Alternatives

CURE urges the Commission to consider other mechanisms to reduce inmate payphone rates. For example, Florida allows families, attorneys, and agencies assisting inmates with reentry into free society to receive inmate calls on a toll-free number. In addition, inmates across the country would benefit from access to voice mail systems so that families and friends could leave messages. While voice mail is not a substitute for two-way calling, it could eliminate the need for a number of calls and would allow families to communicate time-sensitive information more expeditiously. CURE also supports any means to bring actual competition to this market, including awarding contracts for a given facility to more than one company, and making a variety of debit cards available. Only with increased competition will the need for regulatory intervention decrease.

V. SERVICE QUALITY ISSUES

CURE consistently receives complaints from inmates and their families concerning a number of service quality issues. Among the main problems that have been reported to CURE are premature disconnections and substantial billing problems. For instance, correctional institutions and secondary carriers sometimes each bill separately for a call. Similarly many institutions require pre-payment by inmates and their families but refuse to refunding such advance payments upon the inmate's release, or are slow to do so. CURE urges the Commission to establish service quality standards for inmate calling service providers and their connections to the public switched telephone network to address these and other problems facing inmates and their loved ones.

2000).

VI. COST REDUCTION

CURE supports the elimination of any artificial costs imposed on inmate calling service providers. CURE also believes that such cost reductions should be passed through to the consumer rather than just represent an increase in the profit of the provider. A reduction in the commissions charged by correctional institutions is an obvious area to reduce costs. In addition, as noted previously, implementing debit calling would avoid many costs associated with operator services, billing and collection, and bad debt.

CONCLUSION AND RECOMMENDATIONS

This proceeding should be about improving the quality of inmate calling services in terms of rates paid by consumers, the security concerns of correctional institutions, and the distribution of compensation in a fair manner between carriers. The Commission, therefore, should examine ways to contain rates, explore alternatives to monopoly services, and develop quality standards for inmate calling service providers. CURE looks forward to working with the Commission to establish a regulatory regime that implements the 1996 Act's goals of competition and consumer protection.

Respectfully submitted,

CITIZENS UNITED FOR REHABILITATION OF ERRANTS

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2002, a true and correct copy of the foregoing **Comments of Citizens United for Rehabilitation of Errants**, was sent via electronic mail to:

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